

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MEMORANDUM

Honorable Jennifer L. Thurston
United States Magistrate Judge
Fresno, California

RE: **TRINA MARIE SMITH**
Docket Number: 5:02M20746-01
Requested Dismissal of Petition on
Probation Violation/Failure to Appear
Warrant

Your Honor:

This memorandum is to request the Court vacate and recall the Petition for Summons on a probation violation, and the subsequent warrant issued for the defendant's failure to appear.

The Ninth Circuit Court of Appeals' decision in U.S. v. Vargas-Amaya, 389 F. 3d 901 (2004) ruled that a Court's jurisdiction to revoke supervision beyond the term of supervision ordered, is extended if the warrant was issued "upon probable cause, supported by Oath or Affirmation," as required by the Fourth Amendment. On violation Petitions issued prior to 2004, there was no oath or affirmation in our Petitions; therefore, on this defendant's Petition, there is no oath or affirmation.

On July 9, 2002, the above defendant appeared before United States Magistrate Judge Sandra M. Snyder in Edwards, California, for sentencing based on violation of 18 USC 13/California Penal Code Section 490.5, Petty Theft, Under \$50. She was placed on 12 months probation, ordered to pay \$250 fine and a \$10 special assessment. In addition to standard conditions, she was ordered to submit to warrantless search and seizure by the probation officer and not incur any new lines of credit without approval.

On April 2, 2003, the defendant appeared before the Court for a violation of probation alleging that she failed to report to the probation officer with a truthful/complete monthly supervision report. On May 13, 2003, she admitted the Petition and the Court imposed a

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\$250 fine and continued probation for 30 days, with probation to terminate upon receipt of the fine payment.

On June 13, 2003, the probation officer submitted a Petition for Summons, alleging the defendant violated the conditions of supervision by failing to pay the \$10 special assessment. The probation officer served a summons on the defendant, directing her to appear on July 8, 2003. She failed to appear, and the Court issued a warrant, with bail set at \$1,000. The warrant remains outstanding.

Based on the decision in U.S. v. Vargas-Amaya, it is recommended the Court recall the warrant and dismiss the case.

Respectfully submitted,

/s/ Rick C. Louviere

Rick C. Louviere
Assistant Deputy Chief Probation Officer

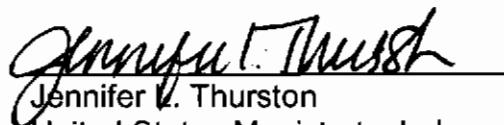
Dated: March 30, 2011
Fresno, California
RCL

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THE COURT ORDERS

(✓) Vacate the Petition for probation violation and recall the warrant issued, pursuant to U.S. Vargas-Amaya.

3/30/11
Date


Jennifer L. Thurston
United States Magistrate Judge

cc: United States Attorney's Office
United States District Court Clerk's Office
United States Marshals Service